IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.724 OF 2004

Sou. Radhabai @ Ramabai Kisan Arude ... Appellant

V/s

Popat Tukaram Kolekar & ors. ... Respondents

Mr. V.S. Gokhale for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 11TH JULY, 2005

P.C.:

1. This appeal is preferred against the judgment and order passed by the Ad-hoc Addl. District Judge, Pune, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Khed dismissing the suit for partition filed by the plaintiff, who was sister of defendants.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for partition on the ground that the property was ancestral property and she

was entitled to her share therein after the death of her father. Defendant No.3 contested the suit on behalf of other defendants. Evidently, the plaintiff is sister of defendants 2, 3, 4 and 5.

4. After hearing both parties and on the basis of available evidence on record,the learned Trial Judge came to the conclusion that though the property was proved to be ancestral property, plaintiff had no share therein and she has no locus-standi to file the suit. It was also held that the plaintiff had proved the will of Tukaram whereby plaintiff was expressly excluded from the beneficiaries under the said will and, as such, the suit came to be dismissed. The learned lower appellate Court Judge also, after hearing the appeal, came to the conclusion that the plaintiff had no right to prosecute the suit for partition as she has no share therein and hence the appeal was dismissed. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal and the only question sought to be raised on behalf of the appellant was legality and validity of the will. However, it is needless to mention that both the

Courts below have recorded concurrent findings that the will was legal and proved and, therefore, the findings were recorded on the basis of the will. It was brought to my notice that the defendant No.3 was son of Tukaram and he had actively participated in the process of writing the will and it was rendered suspicious. It was also pointed out that he has stated in the deposition that Tukaram initially wrote the draft of the will and thereafter it was got typewritten. In respect of this aspect, the document of will was thumb marked by Tukaram and not signed and hence it was submitted that the entire evidence revolving around the validity of the will is doubtful. In this regard, it must be noted that both the Courts below have analyzed the evidence on the issue of validity of the will which is a question of fact and this Court need not go into that. Moreover, both the Courts below appears to have appreciated all the relevant aspects involved in the issue regarding validity of the will. It is to be noted that this so-called question of law sought to be raised on behalf of the appellant at the appellate stage, was not even raised before the lower Court nor any question was put in the cross-examination to the concerned witness. In other words, the issue which is sought to be raised in this second appeal is a pure question of fact. The

appeal has obviously no merit. The reasonings adopted and findings recorded by the lower appellate Court are

legal and proper and, therefore, the appeal deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs.

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